

Virginia Commission on Youth

Study of School Enrollment Practices for Virginia's Kinship Caregivers Work Group

5th Floor East Conference Room
General Assembly Building
December 6, 2011
1:00 p.m.

MINUTES

Advisory Group Members:

Delegate Christopher Peace, Karin Addison, Lisa Bennett, Michelle Cowling, Jessica Eades, Wendell Roberts, Christine Marra, Cate Newbanks, Lelia Baum Hopper, Letha Moore-Jones, Amy Woolard

Guests:

Joel Andrus, James Council, Michael Malloy, Yvonne Welford, Kristi Wright

Staff Attending:

Amy M. Atkinson, Leah Hamaker

Welcome and Introductions

Study Overview

Amy M. Atkinson, Executive Director

Ms. Atkinson welcomed the Advisory Group and asked the members and guests to introduce themselves. Ms. Atkinson briefed the members on the history of this study. She also informed the members about the Virginia State Crime Commission's work reviewing Virginia's barrier crime statutes for kinship care placements. The Crime Commission met that morning and, as staff understood, the Crime Commission endorsed the idea of introducing legislation during the 2012 General Assembly Session to authorize variances for felony drug possession and misdemeanor arson. Extortion, abduction for human trafficking purposes, and felony violations of protective orders would also be added to the barrier crimes statute.

Review of Legislative Drafts

Ms. Atkinson, Jessica Eades & Advisory Group

Ms. Atkinson informed the members that today's meeting was convened to answer the questions raised by the Commission members at their November 9 meeting. Ms. Atkinson presented the recommendation developed by the Advisory Group at its October 18 Advisory Group meeting: to introduce legislation to include kinship care as defined by § 63.2-100 of the *Code of Virginia* as a person to whom public school shall be free and allow local school divisions to require one legal parent and the relative providing kinship care to sign affidavits detailing the reason for the kinship care arrangement. Ms. Atkinson noted that the Advisory Group members had "agreed to disagree" on this recommendation.

Ms. Atkinson noted that the Commission meeting, there was a minor change made to what she presented to the Commission. Staff had been informed that providing false information on an affidavit was actually a Class 5 felony, not a Class 4 misdemeanor. This change was noted in the Advisory Group members' handout as Option 1.

Ms. Atkinson stated that several of the Commission members had questions about the recommendation. The members agreed to defer action to the Commission's December 19 meeting so that staff could gather additional information. Delegate Peace requested staff to submit a request for legislation to the Division of Legislative Service in order to comply with prefiling timeframes. Commission members would receive additional information from staff on the questions they raised and then vote at their December 19 meeting.

Ms. Atkinson referred the members to the options handout and the legislative drafts included in the members' packets. She noted that several of the options listed on the handout were new. Legislative Option 3 was recently submitted by Virginia Beach Public Schools. Legislative Option 2 was drafted after Ms. Atkinson, Ms. Newbanks, and Delegate Peace met with Hanover County officials to discuss the study and receive feedback. The other options were recently developed by staff in response to questions raised by Commission members during the November 9 Commission on Youth meeting. Ms. Atkinson stated that administrative options would not require legislation.

Ms. Atkinson briefly highlighted the options, which are listed below.

Legislative Options

Option 1

Derived from October 18 Advisory Group and presented to Commission on Youth on November 9

Amend § 22.1-3 of the Code of Virginia which addresses persons to whom public school shall be free to include a relative providing kinship care as that term is defined in § 63.2-100. A local school division may require one legal parent and the relative providing kinship care to sign an affidavit detailing the reason for the kinship care arrangement. Language will also be included stating the lack of a parental affidavit will not delay enrollment, provided it is submitted within 30 days, and acknowledging that providing false information regarding the child's residency is a Class 5 felony. The kinship caregiver will be required to notify the school division when the kinship care arrangement ends, at which time the person will cease to be enrolled in the school. Annual verification of the kinship care arrangement will be required.

Option 2

New Option

Amend § 22.1-3 of the Code of Virginia which addresses persons to whom public school shall be free to include a relative providing kinship care as that term is defined in § 63.2-100 or a "close relative" meaning the person's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt. A local school division may require one legal parent and the relative providing kinship care to sign an affidavit developed by the Board of Education detailing the reason for the kinship care arrangement, as well as acceptable reasons why a parent may be unable to care for a child. The affidavit will also specify that once the kinship care arrangement ceases, the child may remain in the school in which he has been enrolled only until the end of the current semester. The legislation also a delayed implementation of July 1, 2013.

Option 3

New Option Submitted by Virginia Beach Public Schools

Amend § 16.1-278.15. of the Code of Virginia to allow for expedited custody petitions of children by a party with a legitimate interest. As stated in the Code, a party with a legitimate interest includes, but is not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" is to be broadly construed to accommodate the best interest of the child.

Option 4 (no draft available)

New Option Derived from Culpeper County Schools Public Comment

Introduce legislation allowing local child welfare agencies and local school divisions to enter into an agreements to authorize a Power of Attorney to verify that the person taking control of the child not only has the right to legally enroll the child in school, but also may access school records, communicate with school officials, and participate in activities restricted to legal parents or guardians under IDEA and FERPA.

Option 5 (no draft available)

Discussed by Advisory Group on September 7

Amend § 22.1-3 of the Code of Virginia to direct school divisions to develop a process for determining residency for the purposes of school enrollment.

ADMINISTRATIVE OPTIONS

Option 1

Discussed by Advisory Group on September 7

Request the Virginia Department of Education to review the work of the Commission on Youth and create a model policy to assist school divisions in the determination of residency of public school students.

Option 2

New Option

Request the Virginia Department of Education and Virginia Department of Social Services to re-convene the Fostering Connections to Success Educational Work Group to amend the Joint Guidance on School Placement for Children in Foster Care Plan in order to address school stability for children in out-of-home care, including children in kinship care arrangements, both formal and informal.

Option 3

New Option

Request the State Executive Council to review the work of the Commission on Youth and develop a plan to ensure school stability for children in out-of-home care, including children in kinship care arrangements, both formal and informal.

The Advisory Group discussed Legislative Option 3, which was recently submitted by Virginia Beach Public Schools. Ms. Lelia Hopper voiced concerns with Legislative Option 3. She stated that custody issues comprise the largest portion of the juvenile and domestic relations court case docket. In 2010, there were approximately 130,000 custody cases, which generated over 260,000 hearings. It is difficult to discuss expediting these cases when it typically takes months for a case to be placed on the court's docket. From a judge's perspective, custody cases were a very serious undertaking.

Ms. Hopper stated that another issue to be considered was the service of process requirements. All parties, including both biological parents, must be notified in custody matters. Such an approach for school enrollment purposes would not be ideal. Creating a "custody lite" petition is contrary to the concepts embodying legal custody.

The Advisory Group noted that this option was also contrary to the informal approach. Judges are already concerned with the caseloads and the number of expedited cases already on the Court's dockets. Moreover, assignment of Guardian ad Litem would also be impacted because the number of home visits could potentially increase. The Advisory Group discussed contested cases versus uncontested cases.

Ms. Atkinson referred the members to Legislative Option 4. This Option describes the process followed by Culpeper County Public Schools. Staff explained that the school division has an agreement with the local Department of Social Services (LDSS) where parents and relative caregivers sign a Power of Attorney (POA) that authorizes the relative caregiver to enroll the child in school and permits the relative caregiver to access school records, and talk with school staff. The POA also addresses concerns regarding access to information under the *Family Educational Rights and Privacy Act* (FERPA) and the *Individuals with Disabilities Education Act* (IDEA). Relative caregivers were referred to the LDSS when they attempted to enroll the child placed in their care into Culpeper schools. The POA was provided to the caregiver by the LDSS attorney. The POA could then be signed and notarized, with both parties and parents present, under the attorney's supervision. Culpeper officials noted that both biological parents were required to sign the POA. The Advisory Group agreed that this process had merit.

The Advisory Group then returned to Legislative Option 3. Ms. Newbanks stated that she was informed that she had to gain custody of her grandchildren in order to enroll them in Hanover County Public Schools. The disadvantage to this requirement was that, when her son's situation was resolved, she had to file a petition in order for her son to regain custody. Because of the delay in obtaining a court date, her granddaughter remained enrolled in Hanover County six months longer than necessary.

The Advisory Group agreed that it was important to reduce the likelihood of children being enrolled by parents who were "school shopping". Mr. Joel Andrus noted that Virginia Beach Public Schools dealt with 1,700 residency cases annually.

The Advisory Group then discussed Legislative Option 2. This option defines "close relative" and allows the school division to require one legal parent and the relative providing kinship care to sign an affidavit detailing the reason for the kinship care. The affidavit will specify that, once the kinship care arrangement ceases, the child may remain in the school in which he was enrolled only until the end of the current semester. This option also had a delayed implementation of July 1, 2013.

The members suggested adding "close" before "relative" in line 21 of Legislative Option 2. The Advisory Group discussed the merit of adding "cousin". The consensus of the Advisory Group was not to include cousin to the definition of "close relative".

The Advisory Group members discussed Legislative Option 5. Delegate Peace noted that this option was a standard solution in that it instructed local school divisions to deal with the problem. The members asked whether this option remedied the problem in that it was similar to the findings of the Attorney General's Opinions. It was noted that this would require school divisions to establish a process for determining residency so that it was stronger than relying on the Attorney General's Opinions, which did not carry the force of law.

The Advisory Group members then discussed the provision in Legislative Option 2 that required the Board of Education to develop an affidavit. The members debated whether this task would be best accomplished by regulation or by policy. The members also discussed whether it was appropriate for the Board of Education to determine the acceptable reasons why a parent may be unable to care for their child. The members asked whether it would be helpful to include a clause about including false information being subject to prosecution. The Advisory Group decided this would not be necessary, since this was an understood component of the sworn affidavit provision.

The members stated that provisions contained in Legislative Option 1 and Legislative Option 2 were helpful and agreed to use language from both of these options. The members continued the discussion on how the Board of Education would accomplish the goal of developing an affidavit. If the Board had to establish reasons why a parent was unable to care for the child, there ought to be some process for receiving public comment. However, if this was to be accomplished by the regulatory process, the Department of Education would not initiate the regulatory process until 2013 because of the wording in Legislative Option 2 stating the bill would take effect July 1, 2013. The Advisory Group agreed to remove language stating that the provisions of the act would become effective on July 1, 2013. Agreement was reached to strike Lines 81 – 85 of the final paragraph requiring the Board to determine acceptable reasons why a parent may be unable to care for a child. The remaining language would simply require the Board of Education to develop an affidavit to be used by school divisions in enrolling students. Accordingly, the language set forth in Lines 80 – 101 of Legislative Option 1 was also removed since the Board would develop the affidavit. It was noted that this would ensure that there were not 135 different affidavit forms.

The Advisory Group discussed including a new provision stating that the caregiver provide proof of the close relative relationship. Several members expressed concern that the burden of proof not fall on the schools. The Advisory Group members agreed that families should have the burden of proof in these circumstances.

The Advisory Group then discussed Legislative Option 4, specifically the power of attorney process. This would alleviate the school divisions' concerns related to FERPA and IDEA. The consensus of the Advisory Group was to incorporate this requirement into the revised option draft. School officials expressed for inclusion of the POA requirement into the revised draft.

The Advisory Group then discussed the language contained in Legislative Option 1, Line 24 stating no person's enrollment be delayed based on the lack of a parental affidavit, provided such affidavit be furnished within 30 days of enrollment. Several members noted that the specific enrollment requirements/documents might need to be referenced. It was also noted that, once a child is enrolled, the receiving school could obtain records from the sending school. Several members stated their belief that the 30-day enrollment provision was not necessary. Ms. Bennett referenced the Code section addressing children served in foster care, specifically § 22.1-3.4, which governs the enrollment of children in foster care, and is the same process all schools must currently use for enrolling those children. The law provides for the immediate enrollment of children in foster care, even without all required documentation. Children in kinship care are similarly situated. Questions were raised whether this loophole would need to be closed in order to treat children in kinship care arrangements the same. Several members noted if the affidavit and the power of attorney were provided, that should be sufficient to

enroll the child. Ms. Atkinson stated she would include the provision in § 22.1-3.4 of the *Code of Virginia* referencing foster care children and school enrollment requirements and include this version in the revised option draft.

The following changes were made to Legislative Option 2:

1. Include “close” before relative on Line 21;
2. After “to” on Line 21, add (i);
3. After “arrangement” on Line 22, add: (ii) a signed power of attorney; and (iii) evidence of the close relative relationship;
4. Include language mirroring the provisions in § 22.1-3.4 Section A of the *Code of Virginia* on enrollment of children in foster care; and
5. Strike Line 81 through the end of Line 85 so the remaining language will require the Board of Education to develop an affidavit to be used by school divisions in enrolling students.

The Advisory Group agreed that, of the Administrative Options, Option 3 was the most appropriate. Ms. Atkinson stated that she spoke with Ms. Karin Addison about this option and Ms. Addison expressed support for this option. The State Executive Council’s membership was comprised of representatives from all child-serving agencies and this option was consistent with the mission of the State Executive Council. Consensus was reached that Ms. Atkinson would present Administrative Option 3 and Legislative Option 2, as revised.

Ms. Atkinson stated that Commission staff would work with Ms. Eades on the legislative draft and send the members the revised legislative option prior to the Commission on Youth’s December 19 meeting. Ms. Atkinson reminded the Advisory Group members that the Commission on Youth would be voting on recommendations at this meeting. She stated that the Chair would likely allow for public comment as this meeting.

The Advisory Group convened at approximately 2:45 p.m.